IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

Richard Cooey, et al., :
:
Plaintiffs, :
:
vs. : Case No. 2:04-CV-01156
: Judge GLF-MRA
Ted Strickland, et al., :
:
Defendants. :

- - -

DEPOSITION

of Terry Collins, taken before me, Julieanna Hennebert, a Notary Public in and for the State of Ohio, at the offices of Attorney General of Ohio, Capital Crimes Unit, 150 East Gay Street, Floor 16, Columbus, Ohio, on Wednesday, October 7, 2009, at 1:30 p.m.

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On behalf of the Plaintiffs.

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By Mr. Charles L. Wille
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Columbus, Ohio 43215
On behalf of the Defendants.

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Wednesday Afternoon Session,
October 7, 2009.

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STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of Terry Collins, a witness called by the Plaintiffs under the applicable Rules of Civil Procedure, may be reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that the examination, reading, and signature of the said Terry Collins to the transcript of his deposition are waived by counsel and the witness; said deposition to have the same force and effect as though signed by the said Terry Collins.

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MR. PORTER: Mr. Wille, can we enter into the usual or normal stipulations that we've entered into in this matter?

MR. WILLE: Yes.

MR. PORTER: We don't need to repeat them for the record, do we?

MR. WILLE: No.

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TERRY COLLINS

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

BY MR. PORTER:

Q. Allow me to reintroduce myself I guess it would be. I'm Randall Porter, I'm from the State Public Defender's Office. And next to me is Kelly Schneider from the State Public Defender's Office.

Tim Sweeney, who is a member of the private bar from Cleveland. Allen Bohnert who is with the Federal Public Defender's Office here in Columbus.

I know you've been deposed before so I'm not going to run you through all the rules that I probably did last time.

Can you state your name for the record?

A. Terry Collins.

Q. Spell your last name?

A. C-o-l-l-i-n-s.

Q. Have you done anything today -- first let me backlog for a minute, and currently employed, sir?

A. I'm the director of the Department of Rehabilitation and Corrections.

Q. Would you prefer today for me to refer to you as Director Collins or Mr. Collins?

A. However.

Q. Or just Director, would that be okay?

A. That's fine.

Q. Director, have you done anything today to prepare for this particular deposition?

A. No.

Q. Have you spoken to Mr. Wille?

A. Not today.

Q. As you're probably aware, we've been doing a series of depositions within the last two weeks. Have you spoken to anyone whom we have

deposed in the last two weeks?

A. Yes.

Q. Was it about their testimony at the deposition?

A. No.

Q. Have you reviewed any written material in preparation for today's deposition?

A. No.

Q. On September 15 the State of Ohio made an effort to execute Romell Broom. Were you involved in that process, sir?

A. I was there, yes.

Q. What was your role?

A. As the director of the agency I attend all executions.

Q. Prior to attending Mr. Broom's execution did you do anything special to prepare for it?

A. No.

Q. Is there anyone in your agency that does anything special to prepare for each individual's execution?

A. Preparation from the standpoint of getting them moved from either Mansfield or the Ohio State Penitentiary to Lucasville and the team that's

involved at that particular time.

Q. Does anyone have the responsibility of reviewing an individual's medical records prior to the execution?

A. Team does that. They do it upon arrival and that evening and then again the next morning actual visual.

Q. Is there anything that anyone looks for in his records during the time period he's been incarcerated?

A. I can't say. I don't know.

Q. Is there anyone on the execution team that talks to the individual or in this case Mr. Broom's caseworker or unit manager just to get background information on him?

A. I don't know.

Q. When was it you went down to SOCF for purposes of Mr. Broom's scheduled execution?

A. I arrived at approximately 7:15, 7:30 that morning.

Q. Prior to arriving had you received any updates concerning his particular status or the execution itself?

A. No.

Q. Prior to your arrival at SOCF that day had you been advised concerning a statement that he had made that it would be -- that it previously had been difficult to insert IVs or draw blood from him?

A. Not prior to.

Q. At some time were you so advised?

A. That morning.

Q. Who was it that advised you, sir?

A. I believe it was the warden.

Q. Did that cause you -- was this in respect to, if you remember, with respect to an evaluation or assessment made of him or with regard to a statement that he himself had made?

A. I don't know. Typically when I arrive at the prison, as I always do for the executions since I've been the director, I ask the warden how things are as a general overview, how the inmate spent the night.

Other issues, any pending legal issue, anything pending in the courts, any potential of having to wait, and just in general discussion I think he mentioned there was some concern about at least one of the arms.

Q. Do you yourself review the timeline for purposes of getting yourself up to speed, if I can use that term?

A. No.

Q. I'm sorry, I know you testified as about what time did you get to SOCF that day?

A. Somewhere between 7:15 and 7:30.

Q. Other than updating yourself, did you have any particular duties or responsibilities that you assumed when you arrived?

A. Not anything different than usual.

Q. Which would be? Other than what you --

A. Sit and give advice.

Q. Is there any particular issue that you remember or was unique with respect to Mr. Broom's case that you had to sit and give advice?

A. Yeah, I was on the phone several different times with the Attorney General's Office and the Governor's Office about a stay that was pending in the Sixth Circuit.

Q. Was that matter eventually resolved that day?

A. About four hours later, yes.

Q. When the stay issue was resolved what action did you take at that point?

A. Started moving through the normal process that we do.

Q. What was the initial time he was supposed to be executed that day?

A. 10:00 a.m.

Q. At that point since you were obviously past 10:00 a.m. when you received the news, did you set up a new timeline or a new schedule for purposes of carrying out the execution?

A. Basically we set up our timeline from the standpoint of we told the Attorney General's Office and the Governor's Office if we didn't have an order from the court at 9:00 o'clock, we needed to stop.

And because that's when we start various action steps and that regardless of whatever time the order came, we would basically pick up and start that one hour at that particular time.

Q. Do you remember the approximate time that you received notification that the stay had been denied?

A. 12:30 to 1:30, somewhere in that area. I'm not exactly sure of the exact time.

Q. How were you notified?

A. By phone call.

Q. What is the procedure, if you could briefly with respect to the hour prior to the execution, what goes on then?

A. Hour prior to the execution is the final, 8:45 the visits stop. Then I start doing certain things that are a matter of practice. I go to the media center, speak to the reporters there. I then go to the victim witnesses and spend some time with them.

And then I go over to the Death Chamber and usually greet each one of the team members. And then basically stand and chitchat with them until they tell us that they're ready to start moving witnesses.

Q. And when they start moving witnesses do you at that point move to a different location?

A. Well, I'm always in the area that's considered to be the Death Chamber, the annex. I'm typically in the Equipment Room usually right before they start moving witnesses.

I call the Governor's Office and advise them we're ready to start and I put a party on the line to the Attorney General's Office.

Q. In this particular case did you in fact

call the Governor's Office and tell them that you were ready to start?

A. Yes, I did.

Q. Was that pretty much the sum and substance of your conversation?

A. Well, it's probably typical of the conversation I have with the Governor's Office when I make the first phone call that we're ready to start moving the witnesses. They usually ask me if everything's okay. I say yes.

Q. And does that terminate the conversation or is there a line kept open at all times?

A. No, not kept open.

Q. Is there a line kept open with respect to your communications with the Attorney General's Office?

A. Yes.

Q. In this particular case who was responsible for maintaining that line?

A. Ernie Moore, my assistant director.

Q. At some point with respect to Mr. Broom's execution or scheduled execution, with respect to Mr. Broom's execution was it discovered that there was a problem with drugs that had been prepared

earlier that day?
A. It was not a problem with the drugs. We discussed, the warden, myself, and I think Mr. Voorhies was in that discussion, and because they had mixed the drugs believing that we were going to start on time, that we felt it was best, and they did remix the sodium thiopental.
Q. Let me go back. My colleagues have written me a note on a question I forgot to ask.
When you spoke to the Governor's Office that day, if I could move back just a minute or two, who did you speak to in the Governor's Office with respect to informing them that it was time that the procedure was going to move forward?
A. Jose Torres I believe.
Q. Do you have a particular contact with the AG's Office with regard to you keeping an open line? Is it the same Assistant AG every time?
A. I can't answer that. I don't know.
Q. Do you know who Mr. Moore was having contact with on that day?
A. All I know, it's a number that we call in the Attorney General's Office. I don't know who's there. I used to do that in my previous position. I

didn't know then who was in the room.
I would call the number, they would answer, and I assume we were on speaker phone. I assume that's what we do now.
Q. At some point during Mr. Broom's execution did you become aware that it wasn't proceeding as planned?
A. Yes.
Q. At what point was that, Director?
A. I don't know what the specific time frame was. I'm watching the same as other people are watching. I'm watching a monitor. And watching them in the preparatory stage of preparing for the execution to gain intervenous access.
And I watched them insert, pull a line over thinking they're going to have a viable vein, and a few seconds later put the line away and put a piece of gauze over it. But I don't know exactly what point that was. I wasn't watching time.
Q. I have no background in medicine so you'll have to be patient with me.
Do you have like a rule of thumb, for lack of a better term here, of how long you wait or how many efforts you see them make before you think

that there's a problem?
A. I don't have a background in medical either, so, no.
Q. I believe it was Mr. Voorhies that testified at one point that he went to the cell at the holding cell itself to ascertain if there was a problem. Is that your recollection?
A. I don't know.
Q. When you became aware that there might be a problem based upon your personal observations, what did you do?
A. I asked to talk to the warden. I had a multitude of conversations during the time period with a multitude of different individuals.
Probably the first one was -- probably my first conversation was actually with one of the team members who was in the room where I am in the Equipment Room just basically asking him did they get that particular vein, did it appear whether they had access.
And they were gaining lots of access, they just couldn't maintain that access, from what I was told.
So I don't know, it was at some point in

time I asked the warden about what was the team saying, what was their thoughts. But I don't know exactly when that was.
MR. PORTER: Chuck, can you get your roster out there?
Q. Director, would that have been Team Member No. 17 that consulted -- that you consulted.
A. Team Member 17 is typically in the room with me. So I assume that it was.
Q. Thank you.
You said you consulted with the warden also. Can you remember what the warden told you?
A. That they were gaining access but losing and not sustaining the access.
Q. There's been testimony at some point you called a break; is that correct?
A. That's correct.
Q. And were you the one who actually made the call for a break?
A. Correct.
Q. How was the team notified you had called a break?
A. I don't know how many conversations I had with the warden in between the time period before I

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told them that I wanted to take a break. I talked to the warden and said do they want to take a break.
He said they've been asking the offender if he wants to take a break and he said no. I said did they want to take a break. He said no.
So they proceeded on for a little bit longer. I don't know how many minutes it was. And then in another conversation with the warden I said I think it's time to take a break. I think we need to give everybody a chance to back up.
The frustration was rising I think in the team in what I could see on the video, and at that point I said let's take a break for a few minutes and everybody regroup.
Q. Did you do anything special during the break? Or let me rephrase the question.
What did you do during the break?
A. I talked to the team members. I talked to the warden. I talked to Mr. Voorhies. I think it was at that time that I called the Governor's Office and told them that we were taking a break, they were having trouble after gaining access to a vein sustaining that access to the vein, and we were going to take a break for a few minutes to let the team

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take a break, let the offender take a break, try to reduce some of the frustration in the team members.
And just talked to them. Not only the medical team members but other team members that were there too.
Q. Can you remember who you talked to in the Governor's Office at that point?
A. Probably Jose Torres. May have been Kent Markus, Governor's chief legal counsel.
Q. You said you talked to the members of the medical team. Did they express any frustrations with you or tell you what the problems or the hurdles that they were facing?
A. Well, they were frustrated because they kept saying that they were gaining vein access but then they couldn't sustain the access when they put the IV solution, I don't know whether that's the proper term for it, but what I call the slow drip bag to it. They were losing the vein.
And they were concerned that they were going to be berated again, that they had failed me, that they had failed the Governor, and that they failed the state of Ohio, that we were going to be ridiculed again.

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That this was another legal challenge. That we were going to be deposed again. That they were going to be drug through the mud again.
So they were really very, very, very, very frustrated because they like to be a hundred percent perfect a hundred percent the time. Unfortunately nobody is.
Q. At some point the break ended; is that correct?
A. Correct.
Q. How was it decided when the break ended?
A. I don't know if there was a decision. There wasn't a decision on how long we were going to break. I felt it was important to get them out of the holding cell, to stop the preparatory stage of gaining IV access and give them a chance to refocus.
Q. Were they actually given the opportunity to walk out of the cell itself?
A. Yes.
Q. Just to get away from the environment?
A. Yes.
Q. Did the medical team members take --
A. Yes. As I recall we went over into the J1 cell block, which is directly adjacent to the

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Death Chamber which is where the team stores their items and sits and relaxes as they switch off and on.
Q. Did the -- my understanding there was a security team in the holding cell at that time, same time?
A. There's always a security team there. I don't know, I assume that they backed out of the cell because there wouldn't be any reason for them to be in there when the medical group wasn't there.
Q. Typically how many members of the security team will be in the cell when they're trying to establish IV access?
A. I don't know. I never counted.
Q. What occurred after the break ended?
A. They continued to try to gain access.
Q. Let me go back.
Prior to the break you're able to see them attempt to gain access; is that correct?
A. Via the video, yes. Closed circuit.
Q. Was the access limited to Mr. Broom's arms at that point?
A. Yes. Arms and they looked at hands. I don't know that they made any attempts to the hand.
Q. Are you able to estimate prior to the

break of how many efforts had been made to access his arms?

A. No.

Q. After the break at some point did Team Member No. 17 become involved in attempting to obtain an access, IV access?

A. I don't know whether Team Member 17 was before the break or after the break. I know at some point he was in the holding cell.

Q. If you remember did he actually attempt to insert an IV himself?

A. I think they all did but I wasn't watching to see exactly who was. I assume he probably did.

Q. When 17 attempted to assist the two medical members, was this something he did on his own or was he acting on the direction of someone else?

A. On his own I suppose.

Q. During the break when you talked to the medical team members were they still hopeful of gaining access?

A. Yes.

Q. At some point during the break was counsel for Mr. Broom notified of what was occurring?

A. I think it was at that break, yes.

Q. And who was responsible for the notification?

A. Austin Stout, one of my attorneys.

Q. Did Mr. Stout notify Ms. Shank at your suggestion or defense counsel at your suggestion?

A. I don't know whether it was my suggestion. It was probably my approval. I'm not sure whether I told him to or whether he asked me if he should.

Q. At that point did defense counsel eventually enter the Death House, for lack of a better term?

A. I believe she did.

Q. Was there an issue at that point of her wanting to talk to Mr. Broom?

A. I believe there was.

Q. Could you, as you understand the issue could you please tell us?

A. I think she asked Mr. Stout to come back and see her client, and Mr. Stout told her no. Mr. Stout come and said to me she'd asked to come back and see her client and I said no.

Q. And the reason you said no was because?

A. Well, once I get -- once I have a warrant for execution and once we start the procedure and close the door and we start the preparatory stage, then it doesn't stop until the Governor says stop. And we don't let people in.

Q. And just so we can use terminology, we have the same terminology so it's easy to use or we're using the same language, there was I guess what I'd like to label as there was a first round of efforts to obtain IV access, you called a break, and then I guess if we can term it a second round, just so we're using the same terminology.

A. I wouldn't refer to them as "rounds."

Q. Tell me what terminology you want to use and then that's what I want to use.

A. We had a break and then after the break. But I wouldn't call it a round.

Q. Okay. Are you able to estimate how long that they, that the medical team continued to attempt to gain access after the break?

A. I don't know how long it was because it was during that time that I was on the phone to the Governor's Office once or twice. Then I was back in J1 talking to Mr. Voorhies, talking to the warden,

and so I don't know exactly how long a time period it was.

Q. At some point did you all enlist the efforts of a doctor there from SOCF?

A. At some point they did ask the doctor to come over.

Q. Was that with your approval?

A. No.

Q. Who asked the doctor?

A. I believe it was the warden.

Q. And it's my understanding that the doctor actually did come over; is that correct?

A. Yes.

Q. Were you able to determine what the doctor did when she came over to the holding cell?

A. No.

Q. Is that because it wasn't visible in the monitor or you were busy with other duties?

A. I wasn't in the room to watch the monitor. I never seen the doctor, or. Talked to the doctor eventually back in J1 and I think that was after she had been at cell front.

Q. When you talked to her in J1 what did she tell you?

A. I was just asking her could she give us advice on how we may proceed. I'd seen somebody carrying out some warm towels and they said it was suggested by the doctor. And that was pretty much the extent of it.

Q. Did she have any advice on how to further proceed or whether it was feasible?

A. No.

Q. Did you all have any other contact with her that day?

A. No.

Q. Had you had prior contact with this specific doctor?

A. No.

Q. So at the time you consulted her you were probably having to introduce yourself for the first time, correct?

A. Correct.

Q. As I'm well aware, you were consulting with numerous individuals on that day, and I understand that it's impossible unless you have a 100 percent memory to remember exactly who you told what to, et cetera. So if you could just help me with as best you can. I know it had to be a

difficult time.

You said you talked to the Governor's Office once or twice?

A. I did.

Q. And this was after that initial break; is that correct?

A. Correct.

Q. And who were you consulting with or speaking with in the Governor's Office at that time?

A. I believe those conversations were with Kent Markus, the Governor's chief counsel.

Q. What was the substance of the conversations?

A. Well, I think the first one was that we had taken a break, that I was going to be talking with the team.

I think after we had discussions I went back and had a second call with him saying that I talked to them and they still believe they could get access, but they have concerns because they're gaining access but what they termed flashing out. And that they couldn't sustain the access. And I said that they were going to continue to try.

I think it was somewhere after that, and

I don't know exactly how long it was, I was calling him back and said they're still trying but it's not looking good. And I'm going to start thinking about the possibility of asking the Governor for a reprieve.

Q. I'm going to get ahead of myself with the question now before I forget it.

Is this, are you able to -- if you're familiar, your perspective, you're unable to gain access and I understand from your prior deposition that you're under a court order to carry out the execution on a particular day.

Do you actually need the reprieve from the Governor before you can declare that you're unable to gain access?

Does my question make sense, do you want me to try again?

A. Try again please.

Q. It's your duty, as I understand the policy, to make the final decision of whether you're able to gain access or not; is that correct? After consulting with your staff?

A. As our policy says that if the team -- first of all, the team has as much time as they need

to gain access. But if they have trouble gaining access, they speak to the warden.

The warden then speaks to me and I start talking with the Governor's Office about whether or not a reprieve could be granted, should be granted, or recommended one be granted.

Q. Has it -- and I could do this in a hypothetical form, and if I can get by with doing it.

Have you ever thought there could be a conflict, for lack of a better term, in that you determining that it's unfeasible for the execution to go forward and yet the Governor's reluctant to grant a reprieve, what would you do in that situation?

A. Well, if I have an order to execute, it's been approved through the courts, it's the law of the state, I'm charged as the director to carry out the law of the state.

The only person who can stop it then is the Governor. So if the Governor would have said I'm not granting a reprieve, then we would carry it on.

Q. I'm really not trying to make light of your position, please don't take my comment that way. But I gather it would be real important that you have a good working relationship with the Governor in that you be persuasive when you call him and say that it's, from your perspective it's unfeasible for the execution to go forward; is that correct?

A. I would believe that to be correct, yes.

Q. Thank you.

At some point, Director Collins, was there a second break taken?

A. Yeah, at some point there was a break taken, because I then gathered all the team together and we probably talked for, I don't know, five, ten, 15 minutes, I don't know, maybe 20, about were they confident they could get a vein, were they going to be able to sustain the vein, did they want to go forward, did they want me to stop. Did they want to have further attempts.

And I explained to them that I had no problem and had already talked with the Governor's Office about potential for a reprieve. And I had no problem calling the Governor and asking for a reprieve.

The issue started surfacing again about we're not getting the job done, so to speak I guess. And I assured them that that wasn't a concern of mine. That we had a policy that said at some point

in time you can tell me and the warden and I'll consult with you all and eventually the Governor's Office.

So during that discussion I guess maybe the clinch-pin to the whole issue that had me call the Governor's Office and ask for the reprieve was that they said even if they got the vein, that they were not sure that the vein would sustain through to the actual execution delivery of drugs.

Q. When you consulted with the team was that somewhat of a unanimous consensus on that issue?

A. Yes.

Q. When you consulted with the team would that have been the entire execution team that was present or just the medical team, medical portion of the team?

A. Well, the medical portion of the team was the group that I was talking with, but it's in an open area so I would assume there was other people behind me listening.

We walked in the J block, walked down the steps of J block actually onto the range of J1 where there's some seats and I met with medical team members and warden and Mr. Voorhies. I suspected

behind me and up above me were members of the team. But I don't know that to be fact. I know who was there with me and who I was speaking to and who I was seeking the information from.

Q. During the course of the execution preparation on that particular day did you learn that Mr. Broom may have had a prior drug usage problem?

A. Some of the team members, and I don't know whether it was at the first break or prior to the -- prior to the break or discussion with the warden or at some point in time I was told that he said he was a drug user I guess.

I guess he's since recanted that statement. But I was told that during the preparatory stage of gaining IV access.

Q. And you mentioned that he's recanted the statement.

A. Uh-huh.

Q. Did you believe that recantation had occurred on the day of execution or something that you've just heard of since?

A. I don't know. I didn't hear that day that he changed his mind. I read it in the paper later that he changed his mind.

Q. After you consulted with your medical team, at that point did you call the Governor's Office again?

A. Yes, I did.

Q. And at that point do you remember who you spoke to in the Governor's Office?

A. Kent Markus.

Q. Can you tell me what you told Mr. Markus?

A. That I was recommending the Governor reprieve this case, that my team felt even if they could gain access they couldn't sustain it through the actual execution.

And that in my mind once we complete the preparatory stage and got the IV established, that once we walked him into that room and put him on the table and started into the actual execution process of inserting the drugs, if I lost that connection, if I lost that sustainable vein at that particular time that I was in a whole 'nother ballpark.

And I was recommending that this case be reprieved. That my team was frustrated, but what they had told me and what made me make the decision and I told them, I believe I told Mr. Markus it was because they felt that even if they got access that

they couldn't sustain access through the actual execution. And I was recommending a reprieve. He said let us talk about that, call me back.

I went and talked to the team or talked to somebody, I don't know exactly who I did talk to at that particular point. Told them that I had recommended to the Governor that a reprieve be given in this case.

I called him back and Mr. Markus said the Governor agreed with me, that they would be writing up the reprieve. I said that I wasn't going to do anything or notify anyone until they had the reprieve ready.

And I think they were already -- it happened fairly quickly so I assume they probably were already thinking how it was to be worded and written when I'd made that first call and said that we may need to start thinking about this. Because it didn't seem like it was long until they told me that the Governor had signed the reprieve.

Q. The reprieve was for a week. Do you know how the time period of one week was chosen?

A. No, I don't.

Q. Did you -- and I know I'm being

repetitious with this question, but lawyers tend to be at times.

Did you recommend a specific time period for length of the reprieve?

A. No, I did not.

Q. Before you announced any -- made any announcement concerning the reprieve, did you actually have a piece of paper in your hand granting the reprieve?

A. No.

Q. After the most recent conversation that you described with the Governor's Office and they said a reprieve would be granted after you had called them back, what actions did you take at that point?

A. Once I was told, and there may have been another call after that, I think they said they were in the process of writing it, which made me therefore assume that my first call they had already started thinking about how it should be worded.

I said I didn't want to make any announcement to the media or to the victim's family until I knew that the Governor had signed it. The same as earlier that morning when I was given a phone call about the Sixth Circuit had denied the stay. I

said I'm not going to move forward until I get something in hand signed about that.

I think I called back a few minutes later to the Governor's Office, they said the Governor had signed the reprieve. It was at that time I had all the team together in J1 cell block, all the team members. Everybody that was involved on the team that day.

I probably spent 15 or 20 minutes with them explaining to them that nobody felt any ill feelings towards them. That they did the job, that we followed our policy to the letter as we always do. That probably there will be some repercussions as there always are.

And tried just to reassure them that the Governor and I and the warden were all okay with what they had done. That it had -- they had nothing to be ashamed of. We did the right thing.

Then I left there, stopped at cell front, spoke to the inmate. Proceeded out the door to the witness rooms where the most difficult job that day was for me to tell the mother of the victim in this particular case that I had requested and received a reprieve on this case from the Governor.

She was very emotional. The gentleman who was with her, who I believe was probably the girl's father, was somewhat boisterous to me. Wasn't threatening but he certainly wasn't happy.

I apologized to them for the fact that I know they came there that day for closure but that I did what I thought had to be done. And excused myself and went to the media room where I then spoke with the media.

And left the media room and went back up to the warden's office. And I don't know exactly what I did after that. I probably called the Governor's Office. I think I talked to the Attorney General's Office a few more times throughout the day

Q. Did you after that initial 15, 20 minute meeting with your execution team did you meet with them later that day?

A. No.

Q. Do you know if they held any additional meetings that day?

A. They usually do. I assume they did. They usually do a debriefing.

Q. And who's responsible for the debriefing?

A. Usually the team leader brings them

together and I think my chaplain is usually there.
Q. My understanding, that there was an initial decision to be made after the reprieve's granted regarding where Mr. Broom would be held?
A. There was.
Q. Were you involved in that decision at all?
A. I was asked my opinion. Well, let me back up a second.
When I was at cell front he said to me he wanted to stay there. And I said that could probably be worked out.
Q. We're talking about "he," Mr. Broom?
A. Yes.
Q. And he wanted to "stay there," being SOCF?
A. Yes.
Q. And it's my understanding from the testimony that we've received that eventually Mr. Broom was transferred to the infirmary or the hospital that day?
A. Yes. He would not have been kept in the Death House. So -- we don't use that for a regular cell. So he would have been transferred to the

infirmary. Which had been done in the past.
I mean, we've had a couple cases that got last minute stays after the person was already there and rather than travel back up the highway, we put them in the infirmary overnight.
I know he was in the infirmary. I don't know how long he stayed there. I know he was eventually moved back to the Ohio State Penitentiary.
Q. And I know this was a bit of the atypical case, but in situations where -- that you just mentioned where the execution has been continued at the last minute, the infirmary or the hospital is the place that the inmate is generally placed as opposed to isolation in some cell or something like that; is that correct?
A. Correct.
Q. Do you know if any special orders were made with respect to Mr. Broom while being held in the hospital such as he was supposed to be on a specific type of diet or anything like that?
A. No.
Q. You don't know or --
A. I don't know.
Q. And I don't know your jargon so be

patient with me again.
When Mr. Broom was transferred to the infirmary, at that point does the warden at Lucasville assume control of him, for lack of a better term?
A. Yes.
Q. While he was -- while Mr. Broom was in his holding cell awaiting execution, is he the responsibility or inmate of SOCF or does he have some sort of special status because he's on execution watch, for lack of a better term?
A. Well, once he arrives on the grounds of the prison he becomes the responsibility of the warden. I don't know whether we actually make a move, we probably do make a move from the count and rolls of the Ohio State Penitentiary to the count and rolls of Lucasville because we keep accurate counts multiple times in a day.
We have to make sure on your paper counts and all that, so I'm suspecting but I don't know for a fact that he's moved from the rolls and counts of OSP to the rolls and counts of Lucasville and then would be taken off the rolls and counts of Lucasville either after the execution or transferred to another

prison.
Q. There has been testimony yesterday that the week in which Mr. Broom was to be executed the Department of Rehabilitation and Corrections had a meeting with a representative of the Governor's Office; is that correct?
A. You've lost me. I don't know what week you're talking. You said a week.
Q. I'm sorry, the week of the execution, a few days after Mr. Broom's execution there was a meeting with yourself and other members of your Department and the Governor's Office; is that correct?
A. After the 15th of September?
Q. After the 15th.
A. Yes, I had a meeting with some people in the Governor's Office.
Q. And the purpose of that meeting?
A. Was to discuss what actions we may take.
Q. Was there any resolution of what actions should be taken during that meeting?
A. No.
Q. And the testimony received yesterday it's our understanding there was a second meeting and

maybe a member of the Governor's Office was not present for that second meeting? And that would have been the week after the execution?

A. Well, it was probably easier to do it this way.

Q. Okay, thank you.

A. Would certainly save me.

A few days after the execution, within a couple days after the execution I had a meeting at my office in my conference room with myself and some of my staff and some people from the Governor's Office.

Since that time I've had probably three, maybe four meetings in my conference room with members of my staff. I've had one formal meeting with the Governor and a member of his staff and a member of my staff. And I've had one informal conversation with the Governor during the time period from September 15 to this very moment.

Q. And please, my response, I smiled a bit there and it wasn't to laugh at you.

It's our understanding based upon the testimony received yesterday that the Department of Corrections is now studying the options available with respect to future executions in the state of

Ohio. Is that a correct statement?

A. The Department of Corrections has been studying since September 15th various options.

Q. Are there any individuals that you've designated to conduct this study, for lack of a better term?

A. Well, Ed Voorhies and Greg Trout, my chief counsel, have been in I think all those meetings. Greg may not have been in one of them because he was on vacation. But he was there via a phone in the one meeting I've had, but since then he's been in those meetings.

Austin Stout was in some of them but I think most of my meetings have been with Chief Counsel Trout and Ed Voorhies. And they have been the persons that I'd had the most discussion with.

Greg has had conversations with Dr. Dershowitz, and Ed is a research nut. So that's the people I've been meeting with.

Q. And we were I think all impressed with his research capabilities yesterday when he testified.

Do you have from your perspective some sort of timeline with respect to this, I keep using

the word "study." Are you comfortable with the word study?

A. Yeah, I'm comfortable with that word.

Do I have a timeline? Well, I guess my timeline is sometime the first of December, since the Governor reprieved two cases, the next execution I have scheduled is in December.

Q. Mr. Voorhies who testified yesterday said he perceived it was his and Mr. Trout's job, role, or duty to put the options before you so you could study them yourself. Is that the way you see this study progressing?

A. Well, yes, from the standpoint of we all have discussed options. I know Mr. Voorhies has done lots of research. I know Mr. Trout has talked to Dr. Dershowitz. I know Greg's doing some research.

So, yes, they're providing me with options and considerations. And then I'll make recommendation to the Governor that we except one of those options.

Q. You see it then as ultimately being the Governor's call?

A. As I think I testified previously two times in depositions in this particular case, on

specific questions that, you, director are the person responsible to change the protocol.

And I think I testified at that time that that is somewhat true, except that I would ask for and seek advice from many others. And since the Governor is my boss, I would certainly want to have conversation with him to make sure that he was comfortable with the approach that I was taking.

Q. Do you foresee yourself as involving anyone else other than the Governor outside your agency, and Dr. Dershowitz, in helping you make the call of which option is best?

A. Probably not.

Q. There isn't directors of agencies similar to yours in other states that you place calls to for guidance on these sort of issues? I know it's ultimately your decision, I'm not downplaying that.

A. Well, over the years as assistant director of this agency and as director of the agency I've had opportunity to talk to other states. I've been to other states and viewed their lethal injection process.

And I've talked to other people about different methods, and everybody that I've talked to,

and I can't recall, I mean I'm talking a period I've been going to deputy director meetings, assistant director meetings or director meetings since 2000. And it's not something we typically sit around and talk about.

But nobody's willing to take the step to go to a different process than's currently been found to be constitutional.

Q. That was going to be one of my final questions but I'm going to jump ahead.

Do you, after the options are put out for you, and I want to come back in a minute but since you raised the issue, assuming the one drug protocol, for lack -- and I know there are other options on the table so I don't -- assuming one of the options looks like the best option to you, though it's not necessarily been an option chosen by other states, does your agency have the courage, for lack of a better term, or you yourself have the courage to be, Ohio to be first in that area?

A. Well, I didn't have but I do now.

Q. I can tell you and it's more of a statement than a question is at least from this member of this side of the table that's always been

whether Ohio could or would or had the will to be the first from our limited perspective.

I know I'm making a statement, not a question.

A. If I can respond to your statement even though it wasn't a question, if I can respond to your statement.

I testified in the two previous depositions in this case and in the testimony before Judge Frost on the stand that one of the reasons why I nor other people in this country who have to deal with the issue and the law of lethal injection were willing to go to a one drug protocol was because of all the legal actions that will ensue.

But I put my hand up this time because I said it really don't make any difference because I'm getting sued no matter what I do. I would get sued over a one drug protocol or a change in the procedure, whatever, really what makes the difference. Because I'm sitting here today getting sued for a protocol that's constitutional.

So I got the courage to do that and I'll do what I think's right, which is what I've always done in the 32 years that I've worked for this

agency.

Q. Have you discussed with the individuals that are helping you conduct your study, have you discussed with them any of the options they have been looking into or is this something that's going to wait till the very end?

A. No, I've had lots of discussions with them. I've had discussions with the Governor's counsel about the options that may be on the table for us. And I'm looking at intramuscular, interosseous, intervenous, combination of the existing drugs, different drugs, single drugs. Other single drugs.

So I'm looking at a wide range of various options that may prove to be a method that can be used for lethal injection.

Q. Is one of the things you're consulting Dr. Dershowitz about is what additional options are available out there?

A. I think Mr. Trout in discussions with Dr. Dershowitz we have made suggestions to him about the use of interosseous. Nobody else in the country uses that.

We discussed with him, I believe they

discussed with him, and I'm third party to these discussions, that he had previously approved I believe in a Tennessee case single protocol of sodium thiopental. I think there was discussions with him about that.

I think there was discussions with him about an intramuscular injection. I'm trying to think of the drug that they were talking about. Hydromorphone I think was the drug that they were talking about.

We had discussions about if you used interosseous device would you have to do a one drug protocol or three drug protocol? If you used Hydromorphone would you use it as a product in and of itself or would there be other products that would be with it?

They used some fancy term, I delineated it down to makes it work faster.

Was there other drugs that we should consider? But bottom line, Dr. Dershowitz says, if I understand and interpret what my counsel said to me, that nobody else in the country is doing or thinking about the things that we're thinking about.

Q. Just because Mr. Voorhies when he

testified yesterday I think discussed a drug that we had never heard of before, which is the --
A. Hydromorphone?
Q. That's it.
Did that come from Dr. Dershowitz?
A. I believe it did. I don't know but I believe it did.
I think that came about in a conversation with I have said to Mr. Trout and Mr. Voorhies I cannot believe that there was not some type of intramuscular drug that could just be a shot.
You can't tell me that people that overdose every day hit their veins. So please ask someone if there is such a thing. And I think that's where that came from.
Q. I'm going to do one other issue real shortly and I'm going to ask for a brief break.
I know you've discussed and I know it's of great concern to your execution team. How is your team holding up if I can ask?
A. Well, I haven't talked to them since the 15th but in talking with people who have talked with them, I think they're fragile right now. And quite frankly, I think I could potentially lose some

of them.
Q. So have you been able to hold your team together?
A. Well, up to this point, yes. But I have said to the Governor I'm not sure that I'll continue to be able to hold them together.
Q. Are they themselves going to get any opportunity for input for what might be the best option in the future?
A. I don't know. Probably.
Q. Has there been any effort to sit down with them either as a group or individually since the 15th and discuss possibilities or what occurred on that day or how they're doing?
A. The warden I'm sure has. I think Greg, Mr. Trout, my chief counsel, I think he had met with them as a group. But I have not personally met with them.
But as I say, I've been told that they're concerned about they didn't carry out the law of the state. And that they have been ridiculed nationally. Which I don't think is justified, but lot of things in this world I don't think are justified.
MR. PORTER: Would there be any

objections if we took a five-minute break Mr. Wille?
MR. WILLE: No.
(Off the record.)
Q. I think I only have one additional question, then I'll defer to my colleagues, sir. I'd like to thank you again for your professionalism and your patience.
I know you've gone through this with me twice in the last month and it certainly would not have been something you would have put at the top of your list.
A. You're welcome.
Q. On the 15th when you talked to the Governor's Office several times were you ever in direct contact with the Governor himself?
A. No.
Q. I think that's all the questions I have. Thank you for your courtesy. Again, I'm willing to, since I'm going to be just listening for a while I'm willing to go down and get you some water.
A. No, I'm fine.
- - -

EXAMINATION
BY MR. SWEENEY:
Q. Good afternoon, Governor -- Director, how are you?
A. I'm good. Thank you. I don't want that job.
Q. I just promoted you.
Just ask you some follow-ups, some details on some things. I think we're pretty close to the end anyway. I also appreciate your courtesy and professionalism today, as always, in connection with this case.
On the day of the execution on the 15th of September, your conversations with the Governor's Office, I think you said you spoke to Mr. Torres, correct?
A. Originally. And I think maybe on the first call after we started the preparatory stage of trying to gain vein access, then I think after that my conversations were with Kent Markus.
Q. On all the other ones would have been with Mr. Markus, is that your best recollection?
A. Yes.
Q. You testified that with the AG's Office

at least your recollection is when you were the I guess the deputy warden or whatever that position is, that you remember there would be a speaker phone?

A. I assumed it was. I mean typically you can hear on the speaker phone is not like talking on the regular phone. So I always assumed it was.

Q. Was it similar with the Governor's Office; did you get the feeling you were on a speaker phone when you spoke to the Governor's Office or not?

A. No, I didn't.

Q. Why wasn't the process -- why didn't you seek the reprieve after that first break or at that first break?

A. Because I felt the team could continue on and be successful in gaining and sustaining access.

Q. And did you know at the time you made that judgment how many times the team had attempted to that point?

A. No.

Q. Did any of them give you any numbers or any estimates?

A. No.

Q. Did you -- you did know I guess or must have known how long they had been attempting,

correct, in terms of minutes?

A. Well, I wasn't counting minutes. So I can't say I knew exactly how many minutes.

Q. Well, but you at that time if you put yourself back on that day on the 15th of September, that would have been something you could have easily determined if you wanted to at that time, how long have we been going, correct? Whether you knew it in mind at that time or not.

A. Yeah, but I didn't think about looking at the clock and saying, oh, we've been going 20 minutes or 30 minutes. And the time can be kind of deceptive.

If I start at 2:00 o'clock, walk into the cell at 2:00 o'clock and I spend 15 minutes looking at the arm, looking at the hands, rolling and all that, I mean that all -- you got me on the clock but the reality is I haven't done anything other than just look.

So I don't keep track of at 2:02 they made their first attempt. I didn't know how many attempts had been made at the first break. Didn't know how many attempts had been made when I asked the Governor for a reprieve. I made my decision on

asking for the reprieve based on what I testified to earlier.

Q. With respect -- let's focus on that first break though. According to the timeline and I think the other testimony and I think perhaps even your testimony today, the first break was taken 30-some minutes, 35, 40 minutes into the process I believe. If that's what the record shows.

A. I haven't looked at the record so I can only assume you're correct.

Q. Just assume whatever the timeline says.

A. Right.

Q. I think the timeline indicates -- I'll just tell you where it says there's at 2:44 there's an entry, you can confirm this if you like, the director is giving the medical team and the inmate a break right now. That's 2:44 in the afternoon.

A. I accept that.

Q. That means that we're talking here 44 minutes after the team has entered the cell, according to the timeline. If we use that as a frame of reference about 45 minutes. First break 45 minutes in.

Your testimony is that that really wasn't

something you were considering in terms of your analysis of the situation, how long, how much time had passed; is that correct?

A. Correct.

Q. Nor were you at that time considering how many sticks or needle injections had been attempted; is that correct?

A. Correct.

Q. In fact, you did not know how many, correct?

A. Correct.

Q. And if we jump ahead to the second break, I think I'm hearing you say that even at that point in time you did not know how many needle insertions had been attempted; is that correct?

A. Correct.

Q. So I would imagine that with respect to the decision you made there during the second break, which was to ask for the reprieve, correct?

A. Correct.

Q. Would not have been based on information about how many times they had made efforts, correct?

A. Correct.

Q. Was any part of the -- back to the issue

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though of why not stopping sooner, was any thought given to you at that 2:45 time frame, 45 minutes in, during that break, we've been going at it for 45 minutes, we've not gotten it, we usually get it in ten or 15 minutes, we should stop, we're not going to get it today.
Did you give that any consideration at that time?
A. No.
Q. Did you give any consideration at that time to the pain, the anxiety, the stress, the emotion the inmate was going through at that time?
A. I never seen any pain in the inmate at any time. I think there was some emotion from him. I think he was getting as frustrated as the team was. But at no time did I see anybody in pain.
Q. Well, just so we're clear for the record, were you ever at cell front?
A. No.
Q. So you were -- your perception and your testimony about not ever seeing Mr. Broom in pain is based upon whatever conclusions you could draw in watching the monitor; is that correct?
A. That's correct.

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Q. So in your discussions with the Governor's Office during that first break, and I think you did testify you did speak with them during that first break; is that correct? Or not? I don't want to misstate the record.
A. I think I believe I talked to them maybe right prior to and during.
Q. The purpose for those communications prior to and during would have been what? Just to let them know we're taking a break, here's the status, that kind of thing?
A. Yes.
Q. Anything more than that?
A. No.
Q. Were there any -- did Mr. Markus or whoever it was you were -- was it Markus at that time you think?
A. Yes.
Q. Mr. Markus suggest hey, we think you ought to get this -- stop it, we've gone too long, we should stop it? Was there any sort of push back from them?
A. No.
Q. No?

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A. No.
Q. So am I understanding correctly that this is basically you're communicating with the Governor's Office providing information to them but it's really not -- information's not coming back from them to you?
Am I right or wrong about that? Is that question clear?
A. No, the question's not clear. No.
Q. Is it a conversation with Kent Markus or is it Mr. Markus, here's what's happening. Here's where we're at just to let you know. Thanks, Director, and he hangs up.
Is there more a manner of give and take, are you discussing options, are you talking about what to do, that type of thing?
A. I think he was asking some questions but I don't think it was discussing options.
You asked a question or two ago was I getting push back from them not to stop, to keep on going. And that was not so. In fact, the only push back I got all day was early in the morning on waiting for the Sixth Circuit because of this late night appeal or whatever it was. I had lots of

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discussions that morning about whether or not I should start the process.
Q. Really?
A. But, and I don't know whether that was to challenge me to see if I was willing to say nope, I ain't doing it, or whether they were really just talking through you have a legal order from the court to proceed. Do you know that? Yes, I know that.
But I also know that I got a court action pending. I also know that as of around 8:30 this morning it was faxed to all the judges in the Circuit, so until I get that, I'm not going anywhere.
So I had that conversation early in the morning. But at no time during my conversation with the Governor's Office did they say no, I think you ought to move forward.
I think your co-counsel described it best earlier that the Governor and his office have a lot of confidence in the information that I'm giving them and the recommendation that I'm giving them.
Q. Similarly in any of those conversations with the Governor's Office after the warrant had been read and the process had begun, were there any discussions or communications from them to the effect

we think you need to stop it, it's gone on too long, that type of thing?

A. No.

Q. No?

A. Nobody ever said to me we think you ought to stop. Nobody asked me if I was considering stopping. That was strictly solely my decision and my recommendation to the Governor's Office.

Q. Go back to the morning, the 8:30 or so conversations. Were those with Mr. Torres?

A. I think they were with Mr. Torres and they were also with the Attorney General's Office.

Q. Who was raising the issue with you you got a lawful order? Who was giving you the push back on that issue when you were saying the Sixth Circuit's looking at this?

A. I think it's Mr. Torres. I don't know that it was push back.

Q. Yeah, maybe that's the one word.

A. I mean they -- I think they were trying to walk me through but you do have the legal order. And I said I understand I got a legal order but I also know that I've got something pending in a court and I'm not willing to proceed until I got a clear go

from you all, the courts. Then we'll move forward.

In fact, when I got called and said the Sixth Circuit has denied, that you can go ahead and proceed, I said I don't have that order in hand.

I've been around long enough to know that because somebody tells you something don't always necessarily mean it's true until you see it in writing. So I would not go until they actually e-mailed me a copy of the order.

Q. Did anyone from the Attorney General's Office in the morning express disagreement with you with your decision to wait for the Sixth Circuit to resolve with that pending appeal?

A. No.

Q. Did anyone from the Governor's Office express disagreement?

A. No.

Q. Your testimony then is that those people, either one or both of those offices were simply raising that issue do you really need to wait, that type of thing.

A. I think that was really the raising the issue of do you really need to wait and seeking my thoughts about that.

Q. The first break, was there a meeting back in J1 on that first break with the medical team or not?

A. Yes.

Q. And was there also during the second break, the decision was finally ultimately made to stop, was there also a meeting back in J1 with the medical team and others that time too?

A. Yes.

Q. Were there -- did you talk with, speak with, seek input from the medical team on both occasions?

A. Specifically on the second occasion I remember them sitting down in front of me. They were sitting down, I was standing up. Two of them were sitting, one of them was standing. I was standing in front of them.

On the first one I think we were standing and I think they were there some of the time and maybe in and out. But the second time it was kind of we went to -- we went off to the side down the stairs, sat down in chairs on the range.

They were sitting down, two of them sitting down, one of them standing up, I was standing

in front of them, and that's when we had the discussions about it.

Q. So that's the second.

A. That was the second time when I decided to ask and recommend that a reprieve be given.

Q. During the first break do you recall whether you actually spoke with medical team members during the first break?

A. I know I did. I don't know that I -- I don't know that I gathered them all together at one time. As I said just a second ago, I remember talking to them but I don't know whether it was individually.

I remember the group meeting the second time but I'm not sure the first time whether I had them and I don't think I had them all together. I think it was kind of in and out. Because I was talking to a lot of different people.

Q. During that first break did any of the medical team members express concern about the viability of continuing that day?

A. No.

Q. Is it your recollection that they were, at least all the ones, all the medical folks you recall speaking with during the first break, that they were all of the view that we ought to keep trying, that type of thing?

A. Yes. They were more concerned at the first break about all the ramifications that we were going to encounter because they hadn't been a hundred percent perfect. But they said move on, they still felt they could gain access because they were gaining access.

They were losing the sustainability after they gained access. It wasn't like they couldn't find a vein. They were finding veins and gaining access, they just were losing the access and sustaining of that access.

But they were willing to move forward and expressed at no time no, let's not go forward, let's not do this.

Q. You're saying none of them were saying that.

A. Nobody said that at the first break.

Q. Were there discussions then during that first break specifically about the issue of we might have to be deposed about this, we're going to be dragged through the mud, whatever those types of

discussions were?

A. Yes, there was.

Q. Really?

A. They didn't say "deposed." They talked about we're going to be ridiculed. We didn't do our job. They're going to say we didn't do this. They're going to find more excuses. It was discussed during that time frame.

Q. And what -- who in particular do you remember?

A. I don't remember. I said I talked to a lot of different people during that first time break.

Q. Were they medical members expressing --

A. I think it was several different team members that was saying that.

Q. But were they medical team members?

A. I don't know. I can't tell you whether it was exactly them. I talked to a lot of different people during that time frame. I was moving around the J1 cell block area talking to different people. And they were concerned about what people were going to say.

Q. Were you concerned about that?

A. Hell, no.

Q. You told them that.

A. That's right.

Q. Were any of the people at that time during the first break, any of the people you spoke with concerned at all for the well-being of Mr. Broom?

A. I think my team members have always been concerned about the well-being of every individual we've in the 32 executions that we've done and the 33rd case that was extraordinary that didn't work. But they've always been considerate of the individual that is being executed.

Q. Did any of the people you spoke with during that first break express to you any concerns about the well-being of the inmate in terms of continuing, he's been 45 minutes at this, we're not going to get it, that type of thing?

A. No.

Q. It's really unfair to him?

A. No.

Q. No one expressed any concern about the inmate's well-being at that point anyway; is that correct?

A. That's correct.

Q. Did you give that any thought during that first break after 45 minutes in?

A. No.

Q. Did you discuss that issue at all with the Governor's Office during that first break?

A. No.

Q. Anytime during the second break did you discuss that issue?

A. No.

Q. Did you discuss that issue with the Governor's Office at anytime during that second break?

A. No.

Q. Did that issue get discussed with you at any time that day?

A. About the welfare of the inmate?

Q. Yes.

A. No.

Q. So that was not a consideration at all in your decision; is that your testimony?

A. That's correct.

Q. Why not?

A. Well, in previous two depositions in this case and in my testimony before Judge Frost I was

hammered quite a bit about, Director, you're going to go till midnight? You're going to stick this individual till midnight?
And I testified in those two depositions and on the court I don't know what I'm going to do because I've never been in that situation.
Now that I've been in that situation and we did it, I didn't stick him till midnight. So maybe I did have in the back of my mind some thought about that.
What I had in the back of my mind was and what made my decision was when my team members told me that if we got a vein and we were to sustain that vein, I don't think that you'll be able to sustain it through the actual execution delivery of the drugs.
That's what sewed it up for me and that's when I called the Governor and said I'm recommending we do a reprieve in this case.
Q. And you did testify to something about that so I don't think we need to go into that any more.
Other than -- let me ask you this, am I correct in understanding your testimony that the Governor's Office, the people you spoke with, Kent

Markus I guess at that time, second call, correct? Or second break.
A. Yes.
Q. You say I want to seek a reprieve, correct?
A. Yes.
Q. What was his response? What did he say?
A. He wanted to talk about it.
Q. Was that it? Did he just at the time I want to talk about?
A. Said we got to think about that. Because I didn't expect him to say okay. I expected them to want to talk about it.
Q. Okay. So that didn't surprise you.
A. No.
Q. Was that the first time during the day you raised with the Governor's Office a possibility of a reprieve, during the second break? Or not?
A. No. I think I testified earlier that at the time of the first break I think I called them and said we were having trouble sustaining the access and that I was getting ready to talk to the team members to get more information, and I did.
As I said earlier, I talked to some team

members. But I think I called back to them and said we're going to go but I think we need to start thinking about potentially a reprieve. So I put it on the table a little bit earlier than that.
Q. So you at least raised the prospect --
A. Yes.
Q. -- you think during that first break.
A. I think so.
Q. What response did you get when you raised that with Mr. Markus during the first break, if you recall?
A. "Okay."
Q. That was it?
A. Yeah.
Q. So you raise it again the second break. You tell Mr. Markus I'm recommending that we get a reprieve; is that correct?
A. Yes.
Q. And you did not make any recommendation as to how long the reprieve would be or anything like that; is that correct?
A. I don't recall making that. I don't believe I did. He asked, co-counsel asked me earlier about seven days. I never asked. I just asked for a

reprieve. I recommended a reprieve. I don't know that I said seven days. Maybe I did. I don't know.
Q. But in any event Markus said we have to think about that, correct?
A. Said they had to think about it.
Q. Did he say anything else at that time?
A. No. I called him back a couple minutes later and which led me to believe after the first -- when I called during the first break they said they would want to talk to him a second time.
After I said I'm recommending we do a reprieve I think they had already started writing something. I don't know that to be a fact, I wasn't there, I was 70 miles south of there. But when I called them back they said the Governor has agreed with that and we're writing it up.
Q. So just so we're clear, you called them back, they didn't call you back.
A. Yes. I probably called them I don't know how many times. Several different times. I wasn't standing there writing down "call to Governor's Office, call to Governor's Office."
Q. I know. And I'm not suggesting that. But here's how it might have also gone: You call

them, tell Markus I'd like to recommend a reprieve, he says okay, we need to think about it, and then he would call you back.

A. Nobody calls me in the Death House.

Q. So you have to call them.

A. I've never been called in the Death House.

Q. Is it your testimony that you have to be the one to make the call?

A. Well, I guess I don't have to be the one. I mean they have the number there, but they didn't call me. I called them.

Q. You called them. Fair enough.

Did you get an answer the next time you called?

A. I believe I did. I got an answer. It was a reprieve. Signed by the Governor. I don't know when it was, whether it was the first call, the second call.

Q. That's why we do these discovery depositions, to find out.

A. I don't know whether it was the first call, the second call, the third call, the fourth call. I don't know that, Mr. Sweeney.

Q. That's all you can do is tell me that.

Were there calls after they said we're going to think about it or where you would call and they said we haven't decided yet, that type of thing?

A. No.

Q. So at some point you got the answer we're going to do the reprieve, correct?

A. Yes.

Q. At that point in time had the team been informed at any time prior to that that the possibility of a reprieve was at least being considered?

A. Yes.

Q. And would that have been during the first break or during the second break?

A. No, second.

Q. So you told the team I'm going to call the Governor and suggest a reprieve or recommend a reprieve prior to making the call; is that correct?

A. Yes.

Q. Is it your testimony that you did not raise the issue of a possible reprieve during the first break?

A. I don't think I did with the team, no.

Q. Did you with who, with maybe Voorhies and other people?

A. I don't think I did with anybody other than myself and my phone call to the Governor's Office.

Q. Let's talk a little bit about this doctor. There was some testimony about her. I think I heard you say you've never seen this woman before; is that correct?

A. That's correct.

Q. And did you have anything at all to do with her coming over that day?

A. No.

Q. Did you even know she was coming over that day?

A. I heard them say, I think I heard the warden say to Mr. Voorhies in passing that they had called and asked the doctor to come over. But they didn't ask me if it was okay. I never seen her until later in the day.

Q. Did you say anything or do anything when you heard that in passing?

A. No.

Q. Any reason why not?

A. Policy says he can ask for a physician if he says they can be there. I had no reason to know why he was bringing her over other than to seek advice. So I didn't say wait a minute, don't do that.

Q. Did you see her in the Death House? The doctor?

A. I seen her in J1.

Q. So you did not ever see her in the Death House.

A. I did not see her in the Death House, the Death Chamber, or the holding area.

Q. As you sit here today do you understand that she had actually been in the Death House and in the cell and actually working on the inmate's leg?

A. I was told that she was there and I was told that she did something to the leg. I did not see that so I'm only going on hearsay.

Q. Is it your testimony then you would not have spoken to her before she went into the cell?

A. I did not speak to her before she went out of J1. I spoke to her as she was coming back into J1.

Q. And was that after the process had been

called off or where in the process was that when you spoke with Dr. Bautista?
A. I think it was after -- it was before it was called off somewhere between the first and second break but I don't know what point that was.
Q. So you spoke to her after she had done whatever she did in --
A. Yeah. I don't know what she did or didn't do.
Q. So your conversations with her occurred after she had been in the Death House, correct?
A. Because I think I testified earlier today --
Q. Is that right?
A. Pardon?
Q. Your conversations with her occurred after she had been in the Death House, correct?
A. Yes. And I testified earlier to that the only thing I knew at that particular moment I seen them carrying some warm towels in and they said the doctor suggested the warm towels might do something.
Q. When did you learn that she'd actually made an effort to stick the needle in the inmate's ankle? Or had you learned that?

A. About I think in one of the meetings that I had after the -- when I was meeting with Mr. Voorhies and Mr. Trout.
Q. So this would be after September 15.
A. Yes.
Q. So is it your testimony, Director, that you were not aware of that on September 15?
A. I was not aware of that on September 15.
Q. What did you do when you found that out if anything? Did you do anything?
A. I didn't do anything.
Q. Were you upset about that? Did you not care about that? What was your reaction to that information?
A. I don't remember if I had a reaction.
Q. Have you -- did you seek to speak with the doctor as to whether she's willing to do that, would she be willing to participate in other executions?
A. I didn't, no.
Q. You testified that only the Governor can stop a process once it gets going is your testimony.
A. That's right.
Q. That's how you kind of view the sort of

the legal setting you're in; is that correct? You got a warrant, it's been read, the process has started. Only the Governor can stop it now, correct?
A. Correct.
Q. Could a court stop it?
A. Wouldn't start it if there was a court action pending.
Q. I know you testified to that. But would you agree that if a court were to enter an order during the process that for whatever reason this process needs to stop, is that something --
A. I suppose I would have to. If I got it in hand.
Q. Let me ask this question then, there were at least one break and I think the testimony has been it was 15 or 20 minutes, that first break. Is that consistent with your recollection as to how long it was?
A. That's consistent, yes.
Q. Why wasn't Mr. Broom's attorney permitted to speak to him during that break?
A. As I said earlier in -- previously answered this question once.
Q. This is a little different question. I'm

specifically asking why during the break was he not allowed -- she not allowed to speak to Mr. Broom. Can you answer that question?
A. I don't think it's a different question but I'll answer.
Q. Okay.
A. When I have a legal warrant to execute, that gives me the authority as the director of the Department of Rehabilitation and Corrections to carry out the law of the state. And once I close the door and once I start the preparatory process, nobody else comes in. That's why I didn't let her in.
Q. Well, the doctor came in. Why was she allowed?
A. The doctor is part of the -- they asked her to come as part of the team.
Q. But she's not on the team, correct?
A. She's not on the team but the warden can ask for somebody to come over, and he did.
Q. Where does it say that?
A. I think the policy talks about people that he can have physicians, other people there.
Q. I mean nothing disrespectful but I believe that provision of the policy is under the

heading of Attendance and that includes also the inmate's witnesses can attend, these people can attend, you can have a physician attend if you want to.

Is that the provision you're relying on in saying that the doctor's --

A. I think he can ask for the doctor to come over and provide expertise, can't he?

Q. I don't know.

A. I think he can. I guess we differ on that.

Q. But your view is once the warrant is read you're not going to let an attorney in to speak with the client.

A. That's correct. If the attorney wants to stop the action, that means to call the court, get a court order to tell me to stop.

Q. But if they want to consult with the client to see if that's what the client wants done, is there any means for them to do that once the warrant's been read?

A. Once the warrant's been read and the process starts, I'm not going to let the attorney in.

Q. Under no circumstances.

A. That's correct.

Q. What about allowing the attorney to speak on the phone with the inmate? Is that something you would allow?

A. Once the process starts, once I start the preparatory stage, I've got the authority of the court to proceed, I'm not going to intervene with attorneys at that time to try to stop the case.

They can so choose to go get on the telephone and call the courts. If the courts want to give me an order, Director, you'll stop, then I guess I'll accept that order. But I'm not going to stop the process and make more confusion in the process.

Q. Here's my question though, the process had been stopped or at least paused because we're taking a 15-minute break, correct?

I'm asking during that break why wouldn't it have been prudent to permit Mr. Broom to at least speak on the phone with Ms. Shank?

A. I just answered the question. Once I close the door and start the process, whether I'm in a break or not doesn't affect my decision in my mind. The answer was no. And the answer will still be no.

Q. You knew though that Ms. Shank wanted to

speak with her client, correct?

A. I don't know that for a fact. Austin Stout told me she wanted to come back. But I don't know. She never told me that and if she had, I'd told her the same thing Austin told her; no.

Q. Well, Austin told you that she wanted to.

A. Right, Austin told me she wanted to come back. He told her no and I agreed with that. And if she'd asked me, I would have said no.

Q. So just so the record's clear, you were aware at least if you believe Austin, that Broom's attorney had requested to come back and speak to him during these events of September 15th after the warrant had been read and during the time the IV access was going on.

A. Yes, I was aware that, I don't know her name but I was aware that an attorney wanted to come back in. I was aware that my attorney told her no and I agreed with that and would have told her or any other attorney at that time no, because once we close the door, then the process really turns over to the state.

Q. You testified Warden -- Director. I demoted you.

A. That's all right. Retire me.

Q. You testified, Director, that you made the decision that you would not announce the reprieve until you actually had the paper in hand; is that correct?

A. That's correct.

Q. Did the team -- well, and I think you testified to a minute ago the team already knew that you were going to at least seek the reprieve, correct?

A. I told the team before I was told that the Governor had signed the reprieve, I told the team I had recommended and the Governor was approving as we were speaking a reprieve.

Q. So at that point was it your intention to have that information you provided to the team serve as notice to them the process is ending for today, we're done for today? Is that your intent?

A. I don't know if I had an intent of that. I don't know if that was my intent or not.

Q. Did somebody communicate to the team at some point "we're done for the day"?

A. Well, when I had them all together and said I asked for, recommended and been told that, I

mean I didn't say that means you're done for today. But they would know that.

Q. Yeah, that's my question. Would you think that's the conclusion they would have drawn from the conversation they had with you? That they were done for the day?

A. I would assume that would be correct, yes.

Q. So you would assume that there would not have been any further efforts made on Mr. Broom's arms or legs at that time.

A. There was not any efforts made after I did that when I got them all together and said. Because the reprieve was done.

Q. Do you know who informed Mr. Broom that? Was he informed at that time or at some later time?

A. I think I probably informed him.

Q. And when did you do that?

A. After I got done with the team and stopped by the cell, recommended to the Governor to recommend a reprieve.

Q. Was this before you actually got a reprieve in writing?

A. I never actually got the reprieve in

writing until I got back to the warden's office, which was probably an hour, hour and a half after that.

Because I spoke to the team, I spoke to the inmate, I spoke to the victim's witnesses, went before the media. I went up to the warden's office. And then I think that's when I actually got it in hand.

I think I said earlier I said when they told me on the phone that the Governor had signed the reprieve I talked to the team, then I stopped as I -- because for me to leave I have to walk by the cell. I stopped and told the inmate that I'd asked for and the Governor had approved a reprieve in his case, and then I went to the witness room where the victims were -- the family witnesses were.

Q. The meeting with Mr. Broom, I wanted to ask you some questions about that. Did you tell him at that time that the reprieve was for seven days?

A. I don't know whether I did or not.

Q. Because I'm curious about his statement. You said he made some statement to the effect he wanted to stay there.

A. He did.

Q. Did you understand him to mean there in that holding cell or there at SOCF?

A. I certainly didn't think he wanted to stay in that holding cell.

Q. Well, I don't know.

A. I don't know either, but I took it to mean he wanted to stay at Lucasville. He said he wanted to stay here. I assume in my mind that meant Lucasville.

Q. I'm wondering though if that was because he had been told we're going to do this again in seven days.

A. I have no idea.

Q. Do you have any memory as to whether or not the conversation about him staying there came up in the context of him also being informed that we're doing this again in seven days?

A. I don't know. The conversation probably lasted 25, 30 seconds.

Q. Did you thank him for his cooperation.

A. Yes, I did.

Q. From your perspective was he cooperative that entire day?

A. Yes. I've been ridiculed for that, but,

yes, I did.

Q. Ridiculed by who?

A. CNN News. In fact they attributed it to you.

Q. Attributed what to me?

A. They ran a clip about the execution in the state of Ohio, they talked to you, then they showed me talking to the media and they came back and said the inmate's attorney says that the prison official you just seen, this was such a wild case that he even thanked the inmate for his cooperation. CNN News.

Q. Well, you did thank the inmate for his cooperation.

A. Yeah. I got ridiculed for it.

Q. It wasn't by me.

A. Well, they attributed it to you.

Q. That doesn't sound like ridicule, sounds like I was pointing out a fact which is that you did thank the inmate for his cooperation.

A. Well. It wasn't the way I interpreted it and it was the way they reported it.

Q. It's their discretion.

A. But I know reporters can do funny things.

Q. And I certainly don't think anyone intended to ridicule you for that.
A. It certainly got -- that's the way it was taken from the CNN report.
Q. That certainly wouldn't have been any intent.
A. I don't know, I got ridiculed because I let an inmate get up and go to the bathroom. But that's neither here nor there either.
Q. You get a thick skin in this job.
A. It's a matter of what's right. And I've always done what's right.
Q. But Mr. Broom was at all times cooperative on September 15.
A. Yes, he was.
Q. As far as you were concerned.
A. As far as I was concerned he was.
Q. Did you ever come to learn or have you ever come to learn since September 15 any of the reasons why the team was unable to get venous IV access and peripheral veins that day?
A. Have I ever come to learn of that?
Q. Yeah, as you sit here today do you know why they weren't able to get access that day?

A. No.
Q. Do you know if it has anything to do with things that are beyond Mr. Broom's control?
A. I don't know.
Q. In other words, some people just have bad veins, correct? Or do you know that or not?
A. I'm not a medical person, I don't know that.
Q. So just so we're clear, as you sit here today you have no knowledge as to any of the reasons why the IV access could not be achieved, whether they're medical reasons, physical reasons, competency reasons, any of that.
A. I don't know.
Q. Is that correct?
A. No.
Q. Were you ever told during that day or did you ever learn during that day that Team Member 21, who's the gentleman on the medical team with the beard and kind of bushy hair, Team Member 21, he was doing the right arm that he actually did get a working IV started, did a drop bag test and the IV was working fine, and he then passed it off to the security member to put it up on the IV hook and the

security member at that point pulled the line and yanked the thing out of the vein? Were you ever informed about that fact?
A. No. Never informed nor did I see it. But I was in and out of the room multiple times viewing from where I couldn't see the actual vein. But I've not heard of that until you just mentioned it.
Q. So you're hearing it for the first time from me.
A. Right.
Q. You made some statements today in your testimony to the effect the team would get ridiculed and that they were actually concerned about that and expressed that concern to you during the first break; is that correct?
A. Yes. Team members did. I didn't say medical team. It was team members. May have been medical team. But it was team members.
Q. Is it your view that any of those people have been ridiculed as a result of these events of Mr. Broom's execution?
A. Yes.
Q. And what do you mean by that? In what

ways do you believe they've been ridiculed?
A. Well, I think bringing them into court and putting them behind a shield dehumanized them at the very beginning.
Q. You mean having them testify anonymously?
A. Yeah. I think seeing words in the paper about the job that you do saying that you're incapable, you're insensitive. Some of the other what I think were totally cruel things to say about somebody. So I believe they have been ridiculed and I have concern for them.
Q. Do you recognize and accept the fact that the reason that they went on for two hours was because the people, the brass, so to speak, you and the other people in charge made the decision to go on that long, correct?
A. Yeah, but I'm not the ones out in the papers ridiculing them either.
Q. Had a decision been made after the first 30 minutes or after the first 45 minutes, that was something you could have done if you wanted to.
A. It wouldn't have made any difference if I stopped after one minute.
Q. Why not?

A. Because you were going to do what you're going to do anyway.
Q. You mean me or you mean just the lawyers?
A. Yeah, everybody. If they didn't, if they weren't a hundred percent perfect a hundred percent of the time, that means get it on the first stick both arms and take the person in and have them executed, they were going to be ridiculed.
Q. Have you given any thought to the fact that Mr. Broom was there that day cooperating, as you've said, ready to die, sort of resigned himself to this fate and then had to wait and wait and wait and the process didn't go quickly, didn't happen, about what kind of impact that would have on him?
A. Yeah, I think that first four hours of having to wait was cruel and unusual.
Q. You're talking about the appeal?
A. Yeah, I'm talking about the appeal. When he was ready to accept the sentence at 10:00 o'clock that morning and then have to wait for four hours, I think that was a hell of a lot worse than spending two hours trying to find a vein.
Q. Is that your testimony?
A. That's my testimony.

Q. You think that's more stressful and painful for an inmate?
A. Yes, absolutely I did. And I do today.
Q. And just so we're clear, you're comparing the time prior to the execution even starting, a warrant even being read, correct?
A. Yeah, when he was ready at 9:00 o'clock that morning, at 10:00 o'clock that morning, and we had to wait for four hours, you don't think that played a part on him?
Q. Do you?
A. Yes, I do.
Q. In what way?
A. I think when he was ready at 10:00 o'clock that morning, the team had worked with him for -- since 10:00, 11:00 o'clock the morning before preparing him for a particular time and a person gets their mind-set on a particular time and then be told wait a minute, we're going to wait another four hours. I think that's not good.
Q. But you'll agree or you don't think there's a difference though between what you've just described and the situation where the warrant's been read, the lights are dimmed, the inmate is now told

we're about to execute you. He's expecting it to be quick and painless according to the Ohio statute, and it's ten minutes and 15 minutes and 20, then an hour, then two hours.
And all of that time he never knew ever that day, did he, that there was a -- that a reprieve was in the works until you told him about it after the process happened, correct?
A. I don't think he would have known that, no.
Q. And have you given any thought to what that experience must have been like for him as a fellow human being?
A. No, I haven't.
Q. You spoke earlier about the meeting with the victim's mother and father, do you remember that?
A. Yes, I do.
Q. Were there tears during that meeting?
A. I think there was.
Q. By whom?
A. By the mother.
Q. Or anybody else?
A. I think the mother.
Q. You said she was very emotional; is that

your testimony?
A. Yeah, I said she was emotional.
Q. Do you know, I mean and this is the question, and I don't mean to be flippant about that at all. We've asked this of some of the other witnesses.
Mr. Broom was hardly a stranger to the Department of Rehabilitation and Corrections, correct?
A. I think he'd been with us for 25 years.
Q. And he's relied on the Department for all of his medical needs for that quarter century, correct? In other words, you provide his medical, right?
A. Yes.
Q. You at the Department.
A. Yes.
Q. He doesn't get his own doctor, for example, correct?
A. No.
Q. He relies on the DRC and its professionals to provide his medical care; is that right?
A. Yes.

Q. The Department knew for at least four or five months that the execution date was going to be in September, correct?
A. Yes.
Q. And yet on the day he's executed these problems with his veins become apparent, correct?
A. Well, I don't know that I would agree with that. I can't say that something doesn't physiologically change in your body when you know you're about to be executed. I don't know whether or not your veins become smaller.
And let's not forget that they were gaining access to veins. They couldn't sustain the veins.
Q. Right. Whatever, I mean let's assume that's true, that they were gaining access and they weren't being sustained because of something with the veins.
A. Right, I don't know what that is.
Q. I don't know what it is either.
A. I don't know what it is.
Q. But I guess my question is, without meaning to be flippant, but there was 25 years to sort of figure out whether there were going to be

problems getting access to his veins.
Why did we not know before September 15th of '09 that you're going to have problems getting access to this man's veins and we better have some other plan in place in case we do?
A. Well, as of September 15th and the morning of September 15th at 7:30 that morning I didn't think I was going to have any problems with his veins.
Q. And I guess my question though is and I know you personally --
A. I don't think anybody else did either.
Q. And I guess my question is is it acceptable to you as the Director that nobody within your agency did not know on September 15th that there were potential problem with Mr. Broom's veins?
A. I would like to know how they would know there would be potential problems. Because nobody understands or knows how somebody's body is going to react, how much flood has been intaken, whether they were drug users, not drug users.
I don't know what happens to somebody's body. Hell, when I go get blood drawn sometimes I have to go three or fours times, and I assume I've

got pretty good veins.
So, no, I don't have a problem with somebody saying, Director, for 25 years I've had this guy and you're going to have problems getting his veins this morning. I don't have a problem with that, no, sir.
Q. You wouldn't have wanted a heads up on that?
A. How would we have known that anyway?
Q. I don't know. I mean, I guess you're telling me --
A. You're right, you don't know and I don't know.
Q. I'm not making any statement, I'm asking the questions. I guess the question is nobody at DRC made any effort to determine whether or not there was going to be any problem with Mr. Broom's veins on September 15.
A. That's not true.
Q. Well, then who did that?
A. Well, whoever, you could probably look at the record. I suppose you've asked for discovery in all the records but our policy calls for somebody to look at him upon arrival at SOCF, the evening of, and

the morning of. So I'm sure somebody did that.
But looking at the vein and saying that's going to be good, maybe it disappears. I don't know. I'm not a medical person. I don't have any reason to know. And they didn't have any reason to believe that morning they were going to have problems.
Q. In the event problems occur with getting the veins as of September 15, you'll agree with me that the DRC had no backup plan in place for getting access to Mr. Broom's circulatory system in order to get these drugs through.
A. That's correct, because we never encountered that problem before. And as I testified two times in deposition in this case and in public hearing before Judge Frost was asked the questions many times, what are you going to do, and I again said going to have to wait and see because I've never been there.
This was an extraordinary case, maybe it was an anomaly, I don't know. But the point of the matter is they didn't -- the point of the matter is I asked for a reprieve because we thought that was the right thing to do.
Q. Do you think it would be humane to allow

the State to attempt to execute Mr. Broom again after failing once?
A. Yes, I do, because we never failed. We were in the preparatory stage. We never started an execution. I never pushed any drugs into Mr. Broom. The execution stage starts when we start pushing the drugs. We were in the preparatory stage.
Q. Who says?
A. That's the way our policy talks.
Q. You'll agree though that the warrant had been read, correct?
A. We never started --
Q. Correct?
A. Yeah, the warrant had been read, Mr. Sweeney.
Q. The lights had been turned off.
A. The lights were always turned off.
Q. The lawyers were no longer allowed back there because you said the process was started.
A. That's correct, the preparatory process.
Q. It was all in the hands of the State at that point.
A. That's correct. But I still disagree that we actually attempted to execute this person.

Q. You talked about the meeting with Mr. Markus after the attempt on September the 15th. Was that in your conference room?
A. Yes.
Q. Other than Mr. Markus who else was present from the Governor's Office?
A. Jose Torres and Renuka Mayadev.
Q. Could you spell that one?
A. I can't. Renuka Mayadev.
Q. Is that an attorney?
A. No, she's an executive assistant in the Governor's Office.
Q. Executive assistant to the Governor?
A. For the criminal justice cluster, which I'm a part of it.
Q. Who does she report to, do you know?
A. I don't know. If I have questions I ask her and she moves up to the chain of command.
Q. Is she an attorney?
A. I don't know.
Q. So those three people from the Governor's Office were present.
A. Yes.
Q. And I think you identified the folks from

DRC before. Who called that meeting?
A. I did.
Q. Did you ask these people from the Governor's Office to come?
A. Yes.
Q. Were there any action items or what was decided at that meeting if anything?
A. I don't think anything was decided.
Q. Did you get any input at all -- why did you want representatives of the Governor's Office at this meeting?
A. To discuss options that I may have.
Q. Why would you want them there? As opposed to --
A. Because they're ultimately going to be involved in the final decision and recommendation I make.
Q. So you wanted to engage them right from the beginning.
A. Yeah.
Q. Did you make the decision after Mr. Broom's execution that we need to do something different?
A. Well, I don't know if I made it that day

or not, but I did make that decision, yes.
Q. But after Mr. Broom's execution.
A. Yeah, it had to be after September 15 so I guess you could say after.
Q. And did anybody, did the Governor provide any input or pressure or anything like that on you, you know what I'm saying, to say Director Collins, we got to do something different?
A. No.
Q. So it really came from you; is that your testimony?
A. That's correct.
Q. And you wanted these folks from the Governor's Office there from the very beginning because you were anticipating that as the process unfolded, you were going to involve them and want them to provide input ultimately to approve whatever is done; is that right?
A. Correct.
Q. Did they provide any ideas or suggestions, the people from the Governor's Office, insofar as letting you know here's what the Governor would like to see done, that type of thing?
A. No.

Q. Did they provide any ideas or suggestions?
A. Not that I recall.
Q. Were they there principally to listen as you saw it or to participate or both?
A. I wouldn't have had them there if I didn't expect for them to participate. But I think they were more asking questions about what do other people do or what do you suggest we do.
Q. Okay.
A. Nobody's told me what to do.
Q. And you've not made up your mind as you sit here today about what you will do?
A. No, haven't made up my mind.
Q. And your time frame I guess you told Mr. Porter was sometime before the next execution, which is in early December; is that right?
A. Yes.
Q. Would it be your anticipation, Director, that to have a recommendation made, approved by the Governor, policies written, ready to go by December 8, which I think is the next execution? Is that your anticipation today as you sit?
A. I don't know when the next execution is.

Q. I think it's December 8, Mr. Biros.
A. I don't know. I don't have my calendar by the executions I have.
Q. I know, but I'm telling you that's the next execution.
A. I accept that I got to make a decision on what method I want to use and I went through a whole bunch of methods I'm considering. And then I got to change the policy, which is not a whole lot of -- that's not real hard to do. It's getting some reports from and advice from Dr. Dershowitz. So I don't know how long that's going to take. I didn't tell him to do it real fast.
Q. Did you give a deadline --
A. No.
Q. -- to Dr. Dershowitz?
A. No.
Q. Do you know if anybody has?
A. I don't know if anybody has. I didn't give anybody a deadline.
Q. That's what I'm trying to get a sense in these depositions whether you've got some time frame you're working under, and it sounds like you don't.
A. I don't. The quicker the better. I'd

like to have all this behind me.
Q. Is it Greg Trout that's carrying the ball on this or Ed Voorhies or who?
A. Greg Trout is the one that's been talking with Dershowitz. So I would kind of say he's where the key is. Dershowitz is looking at the various options that we proposed and telling us whether or not they would be acceptable options.
Q. Would it be your anticipation there would need to be training of the team on whatever option is selected?
A. Would depend on what option's selected.
Q. But would it be your anticipation there could involve a need to train the team depending on what decision is made?
A. May or may not need to be trained. I don't know.
Q. Unless the protocol is changed in some way before the next execution and if we assume that we have somebody show up with similar problems with veins as Mr. Broom did on the 15th of September, would you agree that the Department is not prepared for any different result than what they got on September 15?

A. No, I believe we're prepared to move forward and have successful completion. Been successful 32 of 33 times.
Q. But if you have an inmate who arrives on December 8, or whatever that date is, who for whatever reason presents the same type of vein access issues that Mr. Broom has presented, take that as a given, you have the same issues, would you agree that the Department would not be prepared to carry out an execution on that date?
A. If I had are you saying --
Q. Same problems as Mr. Broom.
A. I'd probably ask for another reprieve.
Q. Okay.
A. But I don't know.
Q. So we'd be in the same position on December 8th as we were in on September 15th, you'd expect the same result.
A. If I did everything exactly the same. But I don't expect that problem, so.
Q. Well, obviously nobody knows what you'll see on the 8th of December, correct?
A. Well, I don't think so, no.
Q. What do you mean "no"?

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A. Well, you thought earlier I should have 25 years ago figured out Broom had bad veins. So I don't think that could be figured out so I would say no.

Q. I guess I'm just unclear, what are you saying "no" to? No what?

A. That I'll know that they'll have bad veins come December whenever it is.

Q. Yeah, you're agreeing you will not know, correct?

A. There's no way to know.

Q. All right, just want to make sure I understand your testimony.

And if that person shows up and does have bad veins, your expectation is the same result as what happened on September 15, correct?

A. I don't know what to expect until I get there.

MR. SWEENEY: I have no further questions. Thank you, Director.

- - -

EXAMINATION

BY MR. BOHNERT:

Q. Just real quickly I want to get this done

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as fast as everyone else, it's been a long two weeks for all of us.

I'm Allen Bohnert again, from the Public Defender's Office. I have questions specific to you.

You talked about the slew of different options that are on the table at this point. Just wondering if you have any thoughts personally on what you would prefer as the protocol going forward.

A. Whichever one the doctors will tell me is the best one to use.

Q. So today before having received any of that stuff from Dr. Dershowitz you don't -- you haven't kind of concluded or thought about what you would prefer?

A. No.

Q. I guess kind of along the same lines, do you have any thoughts on what's the likelihood of keeping the same thing, three drugs, IV peripheral, IV access, versus doing something else, whatever that happens to be whether it's IO, whether it's intramuscular, one drug, more than one drug, whatever, do you have any thoughts on the likelihood of one of those versus the other?

A. I'm not sure I understand your question.

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Q. I guess what I'm trying to ask is what's the likelihood that we just stand pat and don't change a thing and that's going to be the decision?

Not that there's nothing ready yet but just at the end of the whole consideration process and the presentation and the recommendation of the Governor, what's the likelihood that the end result of that product will be the same thing that we currently have?

A. Unlikely.

Q. Unlikely. Like if you had to put a percentage on it.

A. I don't know. I don't know.

Q. I'm just --

A. Come on. I mean, I've considered lots of different options so I'm not going to bias my opinion today on I think this one's better than that one.

Q. I'm not saying -- maybe you misunderstood. I'm not saying choose between the various options.

A. Asked me which one did I like the best or which one I liked the most.

Q. What's the percentage still going forward the final choice is to use peripheral IV access with

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the three drug protocol that is the sodium thiopental, pancuronium bromide, and potassium chloride as it had been?

A. And my answer is it's unlikely.

Q. You're not able to ballpark it?

A. I'm not going to ballpark it.

Q. Just real quick, you did say in reference to your thoughts you said you would prefer whichever one the doctors would prefer?

A. Well, I certainly have to have an expert --

Q. Certainly.

A. -- say this is it. And then I have to be willing to say that's the one I want. And then I guess I'll take the likelihood of chances of what happens after that.

Q. So I guess my question is it seems to me that you referred to doctors in the plural and it's our understanding that you're consulting with Dr. Dershowitz.

I'm just wondering if there are others beyond that that are also being consulted on this whole process.

A. I'm not -- if I used "doctors," I should

have said "doctor."

Q. So the universe of people being consulted is?

A. I'm not consulting with anybody. Other then my chief counsel and one of my regional directors. They're consulting with people and the only one I know they talked to was Dr. Dershowitz. Most doctors won't talk to you.

Q. So to your knowledge the only -- it's not doctors, plural, it's Dr. Dershowitz in conjunction with Greg Trout who is obviously not a doctor, and Ed Voorhies who is not a doctor.

A. Dr. Dershowitz is the only doctor I know we've talked to personally.

Q. That you personally know he's the only one, I'm sorry, just to make sure we have it on the record.

A. That is the only doctor that I know who has been talked to about any of the multitude of ideas or suggestions that we may have.

MR. BOHNERT: Okay. That clarifies it for me, I appreciate it. I have no further questions.

MR. PORTER: I have none. Thank you very

much for your courtesy.

MR. WILLE: I have none.

(Signature waived.)

(Deposition concluded at 4:00 p.m.)

CERTIFICATE

State of Ohio :
: SS:
County of Franklin :

I, Julieanna Hennebert, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Terry Collins was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal office at Columbus, Ohio, on this 8th day of October, 2009.

____

Julieanna Hennebert, Registered Professional Reporter, and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1472)

- - -

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: SS:
County of Franklin :

I, Julieanna Hennebert, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Terry Collins was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal office at Columbus, Ohio, on this 8th day of October, 2009.

Julieanna Hennebert /KSt

Julieanna Hennebert, Registered Professional Reporter, and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1472)

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